were put in said warehouse upon the agreement and understanding that the defendant should not be liable for a loss by accidental fire, was clearly made out. Such being the case, the common-law liability is limited by this special agreement.

When such is the case, there is no rule of law or principle of public policy, that forbids the enforcement of the restricted liability.

Judgments of the Common Pleas and District Court reversed and cause remanded.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF THE UNITED STATES.[1]

SUPREME COURT OF ILLINOIS.[2]

COURTS OF APPEAL OF LOUISIANA.[3]

SUPREME COURT OF MICHIGAN.[4]

SUPREME COURT OF MISSOURI.[5]

ACKNOWLEDGMENT. See *Evidence.*

ACTION. See *United States.*

Action against Strangers to Lease.—Recovery for the use and occupation of leased premises cannot be had against others than the lessees during the term of the lease, if it has not been assigned or the lessees discharged from liability, or if they have not surrendered their interest, or known or assented to any new lease that may have been made to the others: *Doty* v. *Gillett*, 43 Mich.

Abandonment or surrender of interests in real estate cannot be inferred from non-user alone: *Id.*

Where an action for use and occupation was brought against one of the original lessees and a stranger to the lease, and supported by evidence that the defendants acted as copartners, the latter may show their actual relation, and the contract between them may be put in evidence. They may also show that the stranger had agreed to pay what would have been his proportion of the rent under the lease to his co-defendant: *Id.*

ADMIRALTY.

Collision—Duty of Vessel entering Harbor—Negligence not Presumed—Duty of Libellant to show exercise of care on his own part.—

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[1] Prepared expressly for the American Law Register, from the original opinions filed during Oct. Term 1880. The cases will probably be reported in 12 or 13 Otto.

[2] From Hon. N. L. Freeman, Reporter; to appear in 98 Illinois Reports.

[3] From Hon. Frank McGloin, Reporter; to appear in vol. 1 of his Reports.

[4] From Henry A. Chaney, Esq., Reporter; to appear in 43 Mich. Reports.

[5] From Thomas K. Skinker, Esq., Reporter; to appear in 72 Mo. Reports.

While it is the duty of a vessel entering a harbor on a stormy night, to proceed to her anchorage with the greatest care and circumspection, yet, upon a libel against her for collision, a failure to perform such duty will not be presumed but must be shown by libellant: *Shepherd* v. *The Schooner Clara*, S. C. U. S., Oct. Term 1880.

In order to recover, the injured vessel must prove care on its own part, and where it appears that it kept no watch on deck while at anchor, and that if it had done so the collision might have been avoided the libel is properly dismissed; *Id.*

AGENT. See *Estoppel.*

Power of Attorney—Sale on Credit under—Notice to Principal of his Attorney's act by Recording.—Where a power of attorney for the sale of land is general, containing no limitation upon the attorney, and no directions as to whether the sale shall be for cash or on time, it will be in the discretion of the attorney to make sales according to the usual custom in such matters, and a sale on credit, made in good faith, by such attorney will be upheld: *Silverman* v. *Bullock*, 98 Ills.

Where an agent, under a power of attorney, sells and conveys lots of his principal on time, taking mortgages and trust deeds on the same to secure the purchase-money, which he places upon record, the principal will be held to have notice of what the record of the mortgages and trust deeds discloses, and he cannot be heard to deny notice of the fact that his agent has sold on credit and taken notes payable to himself: *Id.*

Where an agent, under a power of attorney, fraudulently sells and conveys lots of his principal to a third person, who gives his notes for the price, payable to the agent, secured by mortgage on the property sold, and the payee transfers the notes to an innocent purchaser, for value, the original owner of the land cannot have the sale of the lots set aside as against the rights of the assignee of the notes, and the latter will have the right to enforce the security for their payment: *Id.*

ASSIGNMENT. See *Debtor and Creditor.*

ATTORNEY.

"*Agents*" *in Courts of Record must be Attorneys.*—Disbarred attorneys can no longer appear as attorneys in any court of record in this state, nor represent any person in court as attorney, agent, or otherwise: *Cobb* v. *Judge of the Superior Court of Grand Rapids*, 43 Mich.

A party cannot appear in a court of record by an agent who is not an attorney duly licensed to practice: *Id.*

BILLS AND NOTES.

Payment—Effect of giving a Promissory Note.—The giving of a promissory note for a pre-existing-debt, whether sealed or unsealed, does not pay or discharge the original debt unless it be agreed that the note shall be accepted as payment and satisfaction—and, in the absence of such an agreement, assumpsit may be maintained for the original debt if the note be produced on the trial to be cancelled: *Walsh* v. *Lennon*, 98 Ill.

Promissory Note—Signature—Bona Fide Holder.—The addition "Vestryman, Grace Church," to each of the names attached to a pro-

missory note does not make it anything but the note of the individuals signing it, if it does not purport to bind the corporation: *Tilden* v. *Barnard*, 43 Mich.

Where the cashier of a bank is one of the makers and payees of a note, the bank cannot take it as a *bona fide* holder without notice: *Id.*

A finding that a note was transferred before maturity for a valuable consideration and that at the time the transferee had no knowledge of the details of its origin, cannot be regarded as equivalent to a finding that he was a *bona fide* holder for value: *Id.*

Bribery.

Bribery of the Public by Candidate for Office.—It is unlawful for a candidate for public office to make offers to the voters to perform the duties of the office, if elected, for less than the legal fees. An election secured by means of such offers is void: *State ex rel. Attorney-General* v. *Collier*, 72 Mo.

Constitutional Law.

Impairing Obligation of Contracts—Power of Legislature to require Judgments against a City to be Registered.—Whatever legislation lessens the efficacy of the means provided by law for the enforcement of a contract, impairs its obligation. But a statute requiring judgments against a city to be registered with the controller before payment, does not impede the collection of the judgment and is not unconstitutional: *State of Louisville* v. *City of New Orleans*, S. C. U. S., October Term 1880.

Supreme Court—Jurisdiction—Question as to validity of Bond given under Unconstitutional Statute—Stay Law passed by seceding State—Validity of.—When in a suit on a bond the defence is that it is void because given under a statute which is in violation of the federal constitution, and the state court sustains its validity, the United States Supreme Court has jurisdiction upon writ of error: *Daniels* v. *Tearney*, S. C. U. S., October Term 1880.

An ordinance passed by the convention of a seceding state immediately after theordinance of secession, and which authorized the sheriff in all executions, except those in favor of the Commonwealth and against non-residents, to receive the debtor's bond for the payment of the debt when the ordinance should cease, impairs the obligation of contracts, and is, therefore, unconstitutional and void: *Id.*

Contract.

Apportionment—Damages for Non-Performance.—An express contract to pay a certain sum per thousand for running certain logs, and for floating a part of them into the main stream, is not divisible and cannot be apportioned, part to running the logs and part to supplying the water; and in an action on the contract, the measure of recovery would be the full contract price as agreed, less any damages from breach of any part of the contract: *Keystone Lumber and Salt Manufacturing Co* v. *Dole*, 43 Mich.

Where a contract is express no provision can be implied: *Id.*

Failure to perform a contract to furnish water for floating logs is not excused by an accident whereby the dam was broken, if the contract

does not provide for accidents, nor if it is a continuing contract and the dam can be repaired in time for substantial compliance: *Id.*

CORPORATION.

How Liability as Stockholder may be Assumed—Parol Evidence to modify Writing.—One may render himself liable as stockholder in a corporation as well by his conduct in respect to the stock of the corporation, as by formal subscription and acceptance of stock: *Griswold* v. *Seligman*, 72 Mo.

Accordingly, where defendants advanced money to a corporation, and to secure the advances, received from the corporation a certificate for a majority of its capital stock, which was absolute and unconditional on its face, but was to be held by them in trust as declared by a resolution of the board of directors, or "in escrow," as it was expressed in an entry on the stock book of the corporation; and while so holding the stock, defendants voted it at two elections and thus elected the directors and other officers, and thereby obtained complete control of the corporation: *Held*, that they were estopped to deny that they were stockholders, and were liable as such, both to the corporation and its creditors; and this, so far as the creditors were concerned, whether they became such before defendants had so treated the stock or not: *Id.*

NORTON, J., dissenting, denied that there was any liability: *Id*

HENRY, J., agreed that defendants were liable to creditors, but denied any liability to the corporation: *Id.*

Where stock is held under a written contract, as security for advances, it is not competent to show that there was a verbal understanding that the bailees were to have the privilege of voting the stock: *Id.*

Subscription to Stock—What amounts to Failure to deliver Certificate—Liability of Subscriber.—In order to bind a subscriber to the capital stock of a corporation, it is not necessary that a certificate of the stock shall be issued to him. All that need be done, so far as creditors are concerned, is that the subscriber shall have bound himself to become a contributor to the fund which the capital stock of the corporation represents: *Hawley* v. *Upton*, S. C. U. S., October Term 1880.

At the solicitation of an agent of a corporation a person executed a bond reciting that, in consideration of ten shares of the stock he was held and firmly bound to pay to the corporation, in instalments, $200, which was twenty per cent. of the face value of the stock. The bond recited that the stock was non-assessable. He paid the first instalment and was entered on the corporation books as a stockholder. He was also published as a stockholder, though without his knowledge. In a suit against him by the assignee in bankruptcy of the corporation, *Held*, that he was a stockholder and liable to pay for his stock: *Id.*

COSTS.

Suit against Public Officer—Defendant not liable Personally.—One sued in his official capacity as escheator for a state and not charged with any official delinquency, cannot be made liable personally for the costs, but the judgment for costs should be confined to the funds in his hand as escheator: *Hanenstein* v. *Lynham*, S. C. U. S., October Term 1880

COURTS.

Jurisdiction.—Because a law gives a court *exclusive* jurisdiction in specified cases, it does not thereby necessarily exclude the court from all other jurisdiction: *Howard* v. *Lacroix*, 1 McGloin.

The law establishing a court is the warrant of its authority, and it can, in default of subsequent legislation, exercise no powers not thereby conferred upon it: *Id.*

Courts of limited authority can entertain no controversy not clearly within the comprehension of the laws conferring jurisdiction upon them; and where they do entertain such matters, all orders, decrees and actions made or had therein are absolutely null and void: *Id.*

DAMAGES. See *Nuisance.*

When due.—Damages resulting from a failure to observe the conditions of a contract of lease, requiring the lessee to keep and return in good order the leased premises, are due from the date of demand by lessor: *Bourdette* v. *Board of School Directors*, 1 McGloin.

The right to sue for and recover such damages arises *ex contractu*, and the prescription applicable to an action arising *ex delicto*, does not apply: *Id.*

DEBTOR AND CREDITOR. See *Husband and Wife.*

Fraudulent Character of Assignment.—Mere inquiry by a creditor to ascertain whether it would be more for his advantage to approve or contest an assignment made by the debtor, is not dishonest or unreasonable, and is not in itself equivalent to an inducement to others to act upon it: *Hubbard* v. *McNaughton*, 43 Mich.

The fraudulent character of an assignment does not depend on the assignor's opinion that what he does is not fraud in law: *Id.*

An assignment for the benefit of creditors is fraudulent if property is withheld that should be put into it, and if the assignors give away or place excessive liens on property that should not be so disposed of: *Id.*

A general assignment is invalidated by a clause purporting to bind the creditors to agree to it and to release their claims in full and discharge the assignor from all liabilities as soon as their just proportion of the proceeds is paid to them. COOLEY, J., dissents: *Id.*

An insolvent debtor cannot dictate to his creditors terms that shall make him independent of his legal obligations: *Id.*

DEED.

Description in Deed—Identity of Lot—Recording Acts.—Where one-half of block numbered 13 was divided into eight lots 40 feet wide and 116 feet deep, running back to an alley, and lots one and two were subdivided into five lots 23 feet wide and 80 feet deep, running across the original lots one and two, and the owner of lot four of the sub-division, on which was a two-story house with a basement, and whose title was of record, executed a deed of trust to secure a loan of money, in which the lot was described as lot 4, in block 13, of the addition, "having a frontage of 24½ feet, and a depth of 80 feet—one two-story and basement frame dwelling-house thereon," and it appeared that no such dwelling-house was on the original lot 4, it was *held*, the description in the trust deed was sufficient to render the record of that deed notice to subsequent

purchasers of lot 4, of the sub-division, and that the description was sufficient to show that sub-lot 4 was the one conveyed, and not the original lot 4: *Bowen* v. *Galloway*, 98 Ill.

It is not necessary to the conveyance of any parcel of land that it shall be called by any particular name, but it will be enough if the description is such as to identify the property. Critical accuracy in the description is not essential: *Id.*

Where the description of land in a deed is, by mistake, so defective that the property cannot be identified, the record of such deed will not be notice to a subsequent purchaser, and such a deed cannot be reformed as against a subsequent *bona fide* purchaser of the property: *Id.*

Equity.

Lien upon two Funds— When one of them must be first exhausted.— It is a rule of equity, that where a creditor has a lien upon two funds, in one of which the debtor has no interest, but has in the other, the debtor has a right to compel the creditor to exhaust the fund in which the former has no interest before resorting to that in which he has an interest. This is subject, however, to the limitation, that if other persons have a superior equity in the fund to which the debtor has no claim, then the rule has no application: *Baird* v. *Jackson*, 98 Ills.

Contract of doubtful Propriety, not enforceable in Equity—Injunction to prevent use of Fictitious Name similar to the name of Complainant.— An agreement to admit a person into a medical institute and assist in the graduation, and granting to him a diploma, in consideration of such person abandoning a fictitious name nearly the same as that of the other party, who was a member of the faculty, is of such doubtful propriety that equity will not lend its aid to enforce it. The granting of diplomas to students in colleges ought not to be made the subject of private contracts with individual members of the faculty for personal advantage to themselves: *Olin* v. *Bate et al.*, 98 Ill.

A bill, by Henry Olin, who was a physician treating diseases of the eye and ear in the city of Chicago, charged that the defendant Bate had assumed the fictitious name of Andrew G. or A. G. Olin, and was engaged in practising his profession in the same city, whose business was treating venereal diseases, and that in such name he advertised extensively, both in the newspapers and by publications and pamphlets largely circulated, by which means the complainant's reputation was injured, many taking him for the defendant. It appeared that the defendant had been practising in the city under the same name before the complainant came there. The bill sought to enjoin the defendant from the use of the name Olin. On the hearing the bill was dismissed: *Held*, that the bill was properly dismissed, for want of equity: *Id.*

Errors and Appeals.

Refusal to give Instructions asked— When not ground for Reversal.— When the instruction given by the court to the jury was correct and was sufficient for the case, the appellate court will not reverse for a failure to give other instructions asked for, even though the latter instructions would have been also correct: *Recknagle* v. *Murphy*, S. C. U. S., October Term 1880.

Refusal of Writ of Error by State Court—Review of by United States Supreme Court—Enforcement of Decree of latter Court.—Whenever the highest court of a state by any form of decision affirms or denies the validity of a judgment of an inferior court over which it has appellate authority, the jurisdiction of the Supreme Court of the United States to review such decision, if it involve a federal question, will attach. It makes no difference whether the decision of the state court be expressed by refusing a writ of error or by dismissing one previously allowed: *Williams* v. *Bruffy*, S. C. U. S, October Term 1880.

In such case, if the United States Supreme Court reverses the decision of the state appellate court, it may enforce its judgment by issuing a mandate to the state appellate court, or by directly reversing the judgment of the inferior state court and entering judgment in favor of the party entitled thereto; *Id.*

ESTOPPEL.

Bond given by Execution-Debtor under Unconstitutional Statute—Enforcement of.—Although a bond given by an execution-debtor under the provisions of a stay law passed by a convention of a seceding state and impairing the obligation of contracts be void on account of the unconstitutionality of the law under which it was given, yet the obligor who has availed himself of the benefit of that law is estopped in an action on the bond, from setting up its invalidity: *Daniels* v. *Tearney*, S. C. U. S., October Term 1880.

By Acts misleading Others—Where a party permits his name to be affixed over the place of business of another, he holds himself out to the world as proprietor, and persons dealing with the true owner, not aware of his interest, and giving credit to the apparent owner, can hold the latter: *Lochte* v. *Gele*, 1 McGloin.

Men have the right to suppose that their neighbors will speak and act the truth, and to transact their business accordingly: *Id.*

Representations binding by way of estoppel may be by actions as well as words: *Id*

When a person conducts a certain business, to which the services of clerks and of a superintendent or manager is essential, and he does not himself act as such manager, there is a representation that the parties actually engaged in the performance of these essential duties are his agents with necessary powers: *Id.*

A person, however, who gives the exclusive credit to a disclosed agent, apparent or real, cannot hold the principal: *Id.*

The manner of charging upon the books of a merchant, in such a case as this, furnishes *prima facie* evidence as to the placing of the credit: *Id.*

EVIDENCE. See *Husband and Wife; Telegraph.*

Books of Account.—At common law, when the clerk who made the entries has no knowledge of the correctness of the same, but made them as the items were furnished by another, it was essential that the person furnishing the items should testify to their correctness, or that satisfactory proof thereof, such as the transactions are reasonably susceptible of from other sources, should be produced: *Stettauer* v. *White*, 98 Ill.

In an action against a defendant for a breach of a contract to buy an

account of the plaintiff on a corporation, the plaintiff is bound to prove his account by proper and legitimate evidence, the same as in a suit upon the account itself. In such suit the testimony relied on to render the plaintiff's books competent was that of the bookkeeper, and the amount claimed appeared upon the ledger, the entries being in his handwriting, and that of a witness who testified that the sales-book produced contained the original entries, and that the entries were in his handwriting, made in the ordinary course of business, of goods that were reported as being sold. The entries showed the amount as claimed and as appearing upon the ledger. He also testified that the goods were brought into the packing-room and there assorted by a man employed for that purpose who called them off to the witness as entry clerk, who made the entries of them in the book as they appeared, and that the entries were then compared with the goods, when the goods were packed and shipped, but that he had no personal knowledge of the sale or delivery of the goods. One of the plaintiffs testified that the original entries of goods sold were made in the sales-book produced, and their books were fairly and honestly kept, in the usual course of business. Evidence was also offered of the carrier's shipping-receipt for the transportation of the goods: *Held*, that the books were not admissible under this proof: *Id.*

Certificate of Acknowledgment—Of Evidence to overcome the Effect thereof.—Nothing short of clear and satisfactory proof, convincing beyond a reasonable doubt, can overcome the proof of the execution of a deed, afforded by the certificate of its acknowledgment. The testimony of the grantor alone is not sufficient: *Baird et al.* v. *Jackson*, 98 Ills.

The acts and conduct of a party claiming a deed purporting to have been made by him is a forgery, before he had knowledge of said deed, can have no bearing on the question as to its genuineness, and can not be used to contradict his testimony that the deed is not his: *Id.*

A deed purporting to have been executed by two persons, brother and sister, to another brother, and purporting to convey the interest of the grantors in premises of which the three were tenants in common, was claimed by both the grantors to be a forgery. It was considered that proof that the pretended deed was a forgery as to one of the grantors, would raise a strong presumption that it was also a forgery as to the other. The joint execution of the deed in the form it was made, was essential to its validity, so proof of the forgery as to one, was of the *res gestæ*, and tended to shed light on the whole transaction: *Id.*

Presumption from Neglect to Testify—Where a bill is filed in aid of execution, and the question at issue is the good faith of a transfer of the land, and the purchaser is made a party defendant, and evidence is given tending to show that the sale was made with an evident intent to defraud creditors, his neglect to make an affirmative showing to support the sale will warrant a court in giving their full force to any legitimate inferences drawn from the evidence given against it: *Whitney* v. *Rose*, 43 Mich.

Husband and Wife.

Fraudulent Conveyance—Made before Lien attaches—May be avoided—Evidence.—The fact that at the time a conveyance is made to the

debtor's wife, the creditor's judgment was no lien on the land by reason of no execution having been issued thereon within a year, will not prevent the creditor, after the revival of his judgment and suing out an execution, from questioning the *bonâ fides* of the transaction. If the debtor paid for the land, and had the title made to his wife in fraud of the rights of the creditor, the land may be reached in equity by the creditor: *Bennett et al.* v. *Stout et al.*, 98 Ills.

The case of *Newman* v. *Willetts*, 52 Ill. 98, is not to be understood as announcing a different doctrine. That case holds, and was only intended to hold, that where a bill is filed in aid of an execution, the judgment on which the execution was issued must be, at the time of filing the bill, a lien on the land sought to be subjected to its payment. What was said in respect to the necessity of the existence of a lien in order that the creditor might have his remedy, must be taken as applicable only to the facts of that case: *Id.*

The fact that a wife, living with her husband, employs him as her agent, to cultivate her farm, keep it in repair, have the grain harvested, stored and sold, is not evidence that the property belongs to the husband, nor does such an agency convert the products of the farm to the husband, or render them liable for his debts: *Id.*

On bill to set aside a conveyance of land to a wife by a creditor of her husband, on the ground that the latter bought and paid for the property, and had the title made to his wife to defraud his creditors, the declarations of the husband and others, made when the wife was not present, and without her assent, are not admissible to affect her rights. The same rule applies to declarations of her grantor. They can not be received to defeat her title: *Id.*

Married Women—Engaging in Business—Employment of Husband as Clerk.—Under the law of Illinois a married woman may own her separate estate, and may invest any funds she may have in business without thereby subjecting her property so invested to the payment of her husband's debts. She may employ her husband as a clerk and to assist in conducting the business as any other person, and will not thereby lose her right of property as against his creditors: *Cubberly* v. *Scott et al.*, 98 Ills.

INFANT. See *Railroad.*

INSURANCE.

Vacancy of Premises.—A clause avoiding an insurance policy in case the premises should "become vacant or unoccupied," did not apply where a man and his family left home for twelve days to visit a sick daughter, and engaged a person to go to the house daily to look after it: *Stupetski* v. *Transatlantic Fire Ins. Co.*, 43 Mich.

It would be burglary to break into, and arson to burn a house, during the temporary absence of the occupants: *Id.*

LUNATIC.

Contract of Person of Unsound Mind.—An exchange of property made by a person of mind so unsound, that the want of mental capacity is apparent to any one of ordinary prudence and observation conversing with him, is of no validity. A guardian subsequently appointed may

recover the property of the insane person without tendering back that received by him in the exchange: *Haley* v. *Troester*, 72 Ills.

MASTER AND SERVANT. See *Railroad.*

MUNICIPAL CORPORATION.

Issue of Bonds Fraudulently antedated to avoid Statute—Right of Purchaser to a return of his Money—Power to borrow Money—When not Repealed by Subsequent Legislation.—The charter of a city authorized it to borrow money at a rate not exceeding ten per cent. A subsequent statute directed the registration of all bonds thereafter issued by municipalities, and provided for the refunding of municipal debts by the issue of such bonds after a vote of the qualified voters. The city subsequently issued bonds fraudulently antedated to evade the registration statute, and sold them in open market through a broker not ostensibly its agent. *Held*, that although the bonds were invalid, a *bona fide* purchaser, without notice, could recover from the city the purchase-money, as if it had been directly borrowed by the city.

Held further, that the fact that the sale of the bonds involved an obligation to pay more than ten per cent. interest did not relieve the city from liability to return the money, since the bonds being invalid the only contract made was the one justified by law, viz.: to return the money.

Held further, that the general power to borrow money conferred by the charter was not repealed by the statute providing for the refunding of its debt and the issue of registered bonds; *City of Louisiana* v. *Wood*, S. C. U. S., October Term 1880.

NAME. See *Equity.*

Change in Name of Paper pending Publication of Foreclosure Notice.—A change of name does not necessarily destroy identity so long as that to which the name pertains remains the same: *Perkins* v. *Keller*, 43 Mich.

A statutory foreclosure is not invalidated by a change in the name of the newspaper in which the foreclosure advertisement is published, and by the removal of the publication office to another place in the same county, if the paper otherwise preserved its identity: *Id.*

NATIONAL BANKS.

Dealings beyond their Corporate Powers.—The maker of a non-negotiable note discounted with a national bank cannot question the right of the bank to recover on it, on the ground that national banks have no right to deal in that kind of paper: *First National Bank of Trenton* v. *Gillilan*, 72 Mo.

NEGLIGENCE. See *Railroad.*

NUISANCE.

Private Nuisance—Damages.—Where the owner knowingly permits a brothel to be established and maintained in his house, which adjoins a tenement of another, by reason of which the latter's tenants leave, and his property is depreciated in value, the former is liable to the latter for the special damage thereby caused him, over and above the

wrong and injury done to the general public: *Givens* v. *Van Studdiford*, 72 Mo.

In such a case the measure of damages is the difference in the selling value of the property and the loss of rent occasioned by such nuisance: *Id.*

In ascertaining these facts, all circumstances that would show a depreciation in value should be considered, and the damage recovered must be the actual depreciation shown to be caused by the existence of the nuisance; *Id.*

Where it is shown that, after defendant's house was occupied as a brothel, other houses of the same character were opened in the neighborhood, so that the damage caused by others cannot be separated from that caused by defendant, he will be liable for all such damage, if the natural and probable consequence of his illegal act was to cause the injury complained of: *Id.*

OFFICE. See *Bribery.*

PARTNERSHIP.

Partnership—Acts of one Partner as binding upon the Firm.—One partner has not the power to bind the other members of the firm by deed without other authority: *Walsh* v. *Lennon*, 98 Ills.

It is, however, within the power of a partner in the mercantile business to borrow money in the name of the firm, and to bind the firm by an agreement to pay interest on the same at any lawful rate, and to sign the firm-name to any writing admitting the fact of borrowing and promising to pay, and thereby furnish evidence against the firm and each of its members: *Id.*

In assumpsit against the members of a firm, a note under seal, signed in the firm-name by one of the partners, reciting that it was given for money borrowed, and promising to pay ten per cent. interest, is admissible under the common counts, and a recovery may be had of both principal and interest on producing the note on the trial to be cancelled. In such case the seal adds nothing to the force and effect of the instrument as an admission of the loan, and of the interest agreed to be paid: *Id.*

PLEADING.

Distinction between Want and Failure of Consideration—Burden of Proof.—As a matter of pleading there is a distinction between the pleas of a want of consideration and a failure of consideration; the latter necessarily admits the original existence of a consideration, and in all cases involves an assumption of the burden of proof: *Denegre* v. *Bayly*, 1 McGloin.

POSSESSION.

Notice of Occupant's Claim of Title—Equity.—One who has knowledge of the fact that land is in the actual possession of another, is thereby put upon inquiry as to the rights of the occupant, and if he purchases, will be held to take with notice of those rights: *Martin* v. *Jones et al.*, 72 Mo.

Equity will interfere by injunction in favor of one claiming title to land through an unrecorded deed, to prevent a sale under a deed of trust held by one who took it with notice of the plaintiff's claim: *Id.*

RAILROAD.

Sale of its Franchises—When immunity from Taxation does not pass to the Purchaser.—The sale under decree of court of a railroad with its "property and franchises," without mentioning its "privileges and immunities," does not pass to the purchaser an immunity of the road from taxation: *Morgan* v. *Louisiana*, 93 U. S. 217, followed; *Humphrey* v. *Pegues*, 16 Wall. 244, distinguished; *East Tennessee V. & G. Railroad Co.* v. *Hamblen Co.*, S. C. U. S., October Term 1880.

Negligence—Man on the Track—Engineer's Duty.—An engineer in charge of a moving train has a right to assume that persons past the age of childhood will heed the usual alarm signals. If, after giving such signals without effect, he uses such means as in his judgment are, in the emergency, most advisable to prevent collision with a person standing on the track, he is not chargeable with negligence, and the company cannot be held liable for the consequences of a collision, although he failed to use other means which were at hand, provided he is competent and experienced in his business: *Bell* v. *The Hannibal & St. Joseph Railroad Co.*, 72 Mo.

In this instance, the engineer applied the air-brakes to the train, but did not attempt to reverse the engine: *Id.*

The mere fact that a train was moving at a dangerous rate of speed, will not make the company liable for injuries to a person run over by the engine, if he was himself guilty of contributory negligence: *Id.*

When Free Rider on Freight Train to be regarded as a Passenger—Liability for Torts of Servant.—It seems that a person riding on a freight train on which passengers are allowed to be carried, is to be regarded as a passenger, although he may have boarded the train without the knowledge or permission of the conductor and paid no fare, if the conductor, after becoming aware of his presence, permits him to remain: *Sherman* v. *St. Joseph Railroad Co.*, 72 Mich.

It is well settled that to make the master liable for the tortious act of his servant, the act causing injury must have been in the line of his servant's duty and within the scope of his employment. Upon this principle, where the conductor had exclusive control of a railroad train and of all persons on it, but a brakeman, nevertheless, without the knowledge of the conductor, assumed to direct a boy on the train to perform a certain service, and in the attempt to comply with the order the boy was injured: *Held*, that the railroad company was not liable: *Id.*

The youth of a person injured on a railroad train may excuse him from concurring negligence, but it cannot supply the place of negligence on the part of the company, or extend the liability of the company for tortious acts of its servants: *Id.*

If a passenger on a freight train is injured while simply riding on a freight car by reason of an accident to the train, the company will be liable if the rule prohibiting passengers from riding elsewhere than in the caboose is not conspicuously posted as required by law; but it is otherwise if the injury is the result of an attempt on his part to perform an unauthorized service for the company: *Id.*

RECORDING ACTS. See *Deed.*

SHIPPING.

Bail for Release of Vessel—Power of Ship's Husband to bind Co-owners.—Part-owners of a vessel are by construction of law, parties to any proceedings *in rem* against her, and are entitled to intervene actively and contest its liability, the extent of the claims against it, and the validity of its seizure and detention: *Mitchell* v. *Chambers*, 43 Mich.

Judgments against a vessel on a claim against her, and against her managing owner and the surety upon a recognisance for her release from detention, are part of a general adjudication of the liability: *Id.*

The several part-owners of a vessel are usually co-tenants, not partners, and will not be regarded as partners unless it distinctly appears that they are so: *Id.*

A vessel-master has no authority as such to find bail for the ship in behalf of the owners: *Id.*

The ship's husband cannot bind co-owners by obtaining bail to release the vessel from seizure on civil process if the co-owners themselves were not personally liable, and neither authorized him to obtain it or acquiesced, and if there was no such emergency as would call for the assumption of personal responsibility: *Id.*

The assent of vessel-owners to the acts of the ship's husband cannot be implied from their silence except as to such acts as are fairly appropriate to occasions with which he is usually allowed to deal: *Id.*

Co-owners of a vessel are not personally liable on claims incurred by it before they acquired their interest: *Id.*

The necessity for obtaining the release of a vessel from seizure does not necessarily imply that the release was obtained on such conditions as to bind owners personally: *Id.*

It seems that a ship's husband is not warranted in assuming extraordinary powers without obtaining authority from the owners if they can be readily communicated with, as by telegraph: *Id.*

One who consents to become surety for a party in a legal proceeding must see to it that he acts on the request of the party himself or his attorney or agent duly authorized to represent him in that respect: *Id.*

The interest of the managing owner of a vessel entitles him to act for himself in obtaining bail for its release from detention, and the bail cannot hold co-owners personally liable for the security without showing that they were parties to the transaction: *Id.*

SURETY. See *Shipping.*

STATUTE.

Customs-Laws—Interpretation of Trade Terms.—In the interpretation of terms used in the customs-laws, the law recognises the authority of those engaged in commerce, and adopts necessarily and as conclusive the meaning which they have given to words and phrases employed in their daily business: *Recknagle* v. *Murphy*, S. C. U. S., October Term 1880.

Statutes derived from other States.—Where a statute of this state is derived from another state, a decision of the Supreme Court of that state construing it, rendered after its adoption here, does not carry with it that authoritative force that it would have had if it had been rendered before the adoption: *Griswold* v. *Seligman*, 72 Mo.

Object of—Caption.—Where the letter of a statute is doubtful or ambiguous, the courts are to seek the object the legislature had in view, and the purposes sought to be accomplished by the enactment: *Howard* v. *Lacroix*, 1 McGloin.

Although the caption of a statute cannot control its text, yet, if the latter be ambiguous, the caption furnishes the best guide as to the objects and purposes of the law: *Id.*

SUNDAY.

Works of Necessity and Charity—Subscriptions taken in Church on Sunday to pay Church Expenses.—Whether work done on Sunday is within the exception to the Sunday law as a work of necessity or charity, is purely a question of law and statutory construction, and depends in all cases upon the intent of the statute: *Allen* v. *Duffie*, 43 Mich.

Where a rule of law is in accord with the finding of a jury the verdict may be allowed to stand, even though the question was improperly left to them: *Id.*

Mere convenience of time and opportunity cannot be the test as to whether work done on Sunday is work of necessity: *Id.*

All the necessary and usual work connected with religious worship is work of charity. Religious societies are formed to do good to mankind, and charity is active goodness: *Id.*

Raising subscriptions from a congregation on Sunday to pay off a church debt or purchase a house of worship, is a work of charity within the exception to Comp. L., sect. 1984, which prohibits Sunday business: *Id.*

The support of public worship is a work of charity that may properly be done on Sunday, and subscriptions taken for that purpose from a congregation assembled for religious exercises on the Sabbath may be sustained: *Id.*

TAXATION. See *Railroad.*

TELEGRAPH.

Compulsory Production of Telegraphic Dispatches in Court—Liability of Company's Agent to Punishment for Refusal.—Telegraphic messages in the possession of the officers of the company are not privileged communications. No act of Congress puts them on the same footing with the mails; and no statute of Missouri or principle of law gives them any different standing from that occupied by any communication made by one through another to a third party, with respect to the liability of the confidant to be called as a witness to produce it or testify to it. The agent of a telegraph company may, therefore, be compelled by proper process to produce such messages before the grand jury; and no rule of the company can excuse him from liability to punishment for refusal so to do: *Ex parte Brown*, 72 Mo.

A subpœna *duces tecum* to compel the production of telegraphic dispatches should give a reasonably accurate description of the papers wanted, either by date, title, substance or the subject to which they relate. The following description is not sufficiently certain: Dispatches between Dr. J. C. Nidelet and A. B. Wakefield, and William Ladd and J. C. Nidelet, and William Ladd and Dr. Nidelet; between Warren McChesney and A. B. Wakefield: between Warren McChesney and J.

C. Nidelet; between the latter and John S. Phelps; between A. B. Wakefield and John S. Phelps; between the latter and William Ladd, and between George W. Anderson and A. B. Wakefield, sent or received by or between any or all of said parties within fifteen months last past: *Id.*

Tenant in Common.

Contribution—As between Tenants in Common for Improvements, etc. It is a familiar and elementary rule, that where a tenant in common makes necessary repairs on the property, necessarily purchases an incumbrance or outstanding title, or improves the property with the express or implied assent of his co-tenants, these all inure to the benefit of all the tenants, and the law requires each to contribute to the expense in proportion to his interest in the property: *Baird* v. *Jackson*, 98 Ills.

Where one tenant in common had given his express assent to the erection of buildings by his co-tenant upon premises held by them, even though there then existed what purported to be a conveyance from the tenant so assenting, to his co-tenant, of the interest of the former in the premises, of which he at the time had no knowledge, and which proved to be a forgery, it was *held*, the tenant so assenting to the making of the improvements, having held his co tenant, the grantee in the forged deed, out to the world as the sole owner, by superintending the construction of the buildings, and by other acts, will be estopped to claim that his interest in the property shall not be liable for its proportionate share of the cost of the improvements: *Id.*

All improvements placed on real estate by the owner while it is incumbered inures to the benefit of the holder of the incumbrance, and their value cannot be claimed against the lien when they savor of the realty, but are subject to it: *Id.*

So, where one tenant in common, by the express consent of his co-tenant, places valuable buildings on the common property, and thereby acquires a lien on his co-tenant's interest for a proportionate share of the cost of the improvement, it will be an accession to his interest, which will be subject to a deed of trust given by him on the property, and it will pass to the trustee to the same extent, in the same manner, and for the same reasons that the improvements became liable to the lien of the trust deed: *Id.*

United States.

Charter of Vessel for War Service—Injury from Disobedience of Orders by the Master not a War Risk— Voluntary Payment.—Where a vessel is chartered for war service, an injury resulting from disobedience by the master of the orders of the commanding military officer is not a war risk for which the government is responsible, but a marine risk which the owner assumes: *White* v. *United States*, S. C. U. S, October Term 1880.

Where money is voluntarily paid with a full knowledge of the facts, the fact that it was paid to avoid a controversy with the United States is no ground for recovery against the latter: *Id.*

Voluntary Payment. See *United States.*